

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DALLEN and PEGGY WENDT,)	
)	
Plaintiffs)	
)	
v.)	Case No.: 08cv3612
)	
)	Judge Castillo
HANDLER, THAYER & DUGGAN, LLC, et al.,)	
)	Magistrate Judge Cole
Defendants)	
)	

**DEFENDANTS FOSTER & DUNHILL CONSULTING, INC. AND FOSTER &
DUNHILL PLANNING SERVICES, LLC'S MOTION TO DISMISS**

Defendants Foster & Dunhill Consulting, Inc., and Foster & Dunhill Planning Services, LLC, by their undersigned attorneys, move to dismiss plaintiffs' complaint for lack of personal jurisdiction pursuant to Fed. R. Civ. R. 12(2), and in support thereof state as follows:¹

Introduction

Plaintiffs brought this action against several defendants for alleged violations of the Securities and Exchange Act, Illinois Consumer Fraud Act, and certain common law torts. Plaintiffs allege that Foster & Dunhill Consulting, Inc., and Foster & Dunhill Planning Services, LLC, are a corporation and a limited liability company of Florida with their principal places of business in Florida. Without defining "Foster & Dunhill", Plaintiffs allege that "Foster & Dunhill" (1) was present at a conference attended by one of the plaintiffs in the Bahamas; and (2) was named as one of several "trust managers" of a trust established in Nevis, West Indies.

¹ On August 28, 2008, Movant served Plaintiffs' counsel with a letter setting out its arguments in this Motion.

Argument

Plaintiffs cannot establish that either Foster & Dunhill Consulting, Inc., or Foster & Dunhill Planning Services, LLC, is subject to this court's personal jurisdiction. Foster & Dunhill Consulting, Inc., was incorporated in the state of Florida on August 30, 2006. Its principal place of business is in Florida. Foster & Dunhill Planning Services, LLC, was organized pursuant to Articles of Organization in the state of Florida on September 1, 2004. Its principal place of business is in Florida. See affidavit of Stephen P. Donaldson, marked as "Exhibit 1," attached hereto, and incorporated herein by reference.

It is plaintiffs' burden to provide sufficient facts to support the exercise of personal jurisdiction. *See RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1276 (7th Cir. 1997). The court may consider affidavits from both parties and, while it resolves factual disputes in favor of the plaintiff, it may take as true facts contained in the defendant's affidavit that go unrefuted. *Glass v. Kemper*, 930 F. Supp. 332, 337 (N.D. Ill. 1996), *aff'd*, 133 F.3d 999 (7th Cir. 1998).

Whether personal jurisdiction is proper in the Northern District of Illinois depends on whether Illinois courts are authorized to exercise personal jurisdiction over Foster & Dunhill Consulting, Inc. and Foster & Dunhill Planning Services, LLC. *See* Fed. R. Civ. P. 4(k)(1)(A); *Janmark, Inc. v. Reidy*, 132 F.3d 1200, 1201 (7th Cir. 1997), citing *Omni Capital International, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97 (1987). While plaintiffs are suing under a federal statute, the Securities and Exchange Act, that statute does not authorize nationwide service of process as other federal statutes do. Fed. R. Civ. P. 4(k) (2) does not apply because both Foster & Dunhill Consulting, Inc. and Foster & Dunhill Planning Services, LLC, are subject to suit in

Florida. Central States, Southeast and Southwest Areas Pension Fund v. Reimer Express World Corporation, 230 F.3d 934, 940 (7th Cir. 2000).

Illinois courts are now empowered by the Illinois long-arm statute to exercise jurisdiction on any basis permitted by the Illinois and United States Constitutions. *Id.* citing 735 ILCS 5/2-209(c). The Central States Court described the analysis for determining whether the exercise of personal jurisdiction is constitutionally permissible:

To decide whether specific personal jurisdiction may be exercised, a court must engage in three distinct steps in the following order: (1) identify the contacts the defendant has with the forum; (2) analyze whether these contacts meet constitutional minimums and whether exercising jurisdiction on the basis of these minimum contacts sufficiently comports with fairness and justice; (3) determine whether the sufficient minimum contacts, if any, arise out of or are related to the causes of action involved in the suit. If the court determines at the second step that a defendant does not have sufficient minimum contacts with the forum, then its personal jurisdiction analysis ends without examining the plaintiff's causes of action. *Id.* at 944.

Here, neither Foster & Dunhill Consulting, Inc. nor Foster & Dunhill Planning Services, LLC has had sufficient contacts with Illinois to support the exercise of personal jurisdiction by an Illinois court.

Examining the first two criteria listed above, it is evident that neither of these companies have had any sufficient contact with Illinois. As set forth in the attached affidavit of Stephen P. Donaldson, both defendant companies were founded in Florida and have their principal places of business in Florida (Ex. 1, ¶¶ 3,6,9). Neither company has any retail outlets, business offices, bank accounts, employees or representatives located in Illinois (Ex. 1, ¶ 11). Neither of the companies actively solicit Illinois customers (Ex. 1, ¶ 12). No one on behalf of either company visited Illinois in furtherance of the business of those two entities. (Ex. 1, ¶ 10). These facts

demonstrate that neither company has had sufficient contacts to satisfy the Illinois long-arm statute.

Although the lack of sufficient contacts with Illinois is a sufficient basis upon which to dismiss this Complaint against them, the companies should also be dismissed because they could not have committed any acts arising out of the events alleged, since neither company existed at the pertinent time. See Ex. 1 attached hereto.

Conclusion

For these reasons, Foster & Dunhill Consulting, Inc., and Foster & Dunhill Planning Services, LLC, respectfully request this Court to dismiss this case pursuant to Fed. R. Civ. P. 12(b)(2) and to grant any other relief this Court deems just.

By: /s/ Peter M. King
One of the Attorneys for Foster & Dunhill
Consulting, Inc. and Foster & Dunhill Planning
Services, LLC

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DALLEN and PEGGY WENDT,)	
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Plaintiffs)	
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v.)	Case No.: 08cv3612
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HANDLER,)	
THAYER & DUGGAN, LLC, et al.,)	
)	Magistrate Judge Cole
Defendants)	
)	

AFFIDAVIT OF STEPHEN P. DONALDSON

I, Stephen P. Donaldson, having been duly sworn on oath, depose and state the following facts are within my personal knowledge and are true:

1. I am a defendant in the above-captioned matter.
2. I am the President of Foster & Dunhill Planning Services, LLC, a Florida limited liability company.
3. Foster & Dunhill Planning Services LLC was organized pursuant to Articles of Organization in the state of Florida on September 1, 2004. A true and genuine copy of the Articles of Organization is marked as "Exhibit A," attached hereto, and incorporated herein by reference.
4. Foster & Dunhill Planning Services LLC was organized on September 1, 2004, and not before that date.
5. I am the President of Foster & Dunhill Consulting Inc.
6. Foster & Dunhill Consulting Inc. was incorporated pursuant to Articles of Incorporation in the state of Florida on August 30, 2006. A true and genuine copy of the Articles of Incorporation is marked as "Exhibit B," attached hereto, and incorporated herein by reference.

7. Foster & Dunhill Consulting Inc. was incorporated on August 30, 2006 and not before that date.

8. Neither Foster & Dunhill Planning Services LLC nor Foster & Dunhill Consulting Inc. succeeded to any liabilities of the other company.

9. Both Foster & Dunhill Planning Services LLC and Foster & Dunhill Consulting Inc. have their principal place of business in Florida.

10. No employee of either Foster & Dunhill Planning Services LLC or Foster & Dunhill Consulting, Inc. has visited the state of Illinois, in furtherance of the business of those two entities.

11. Neither Foster & Dunhill Planning Services LLC nor Foster & Dunhill Consulting, Inc. has any retail outlets, business offices, bank accounts, employees or representatives located in Illinois.

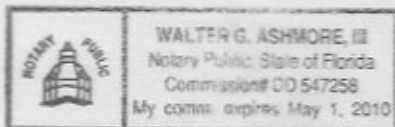
12. Neither Foster & Dunhill Planning Services LLC nor Foster & Dunhill Consulting, Inc. actively solicits Illinois customers.

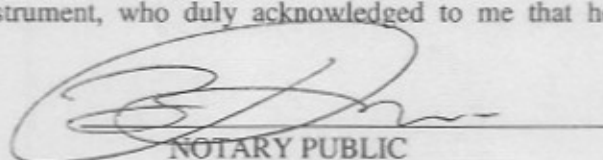
13. Neither Foster & Dunhill Planning Services LLC nor Foster & Dunhill Consulting, Inc. own or rent real estate in Illinois.

Dated this 29th day of August, 2008.


Stephen P. Donaldson

On this 29th day of August, 2008, personally appeared before me Stephen P. Donaldson, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.




NOTARY PUBLIC



FLORIDA DEPARTMENT OF STATE

Glenda E. Hood
Secretary of State

September 2, 2004

FLORIDA FILING & SEARCH SERVICES, INC.

The Articles of Organization for FOSTER & DUNHILL PLANNING SERVICES LLC were filed on September 1, 2004, and assigned document number L04000065111. Please refer to this number whenever corresponding with this office.

In accordance with section 608.406(2), F.S., the name of this limited liability company is filed with the Department of State for public notice only and is granted without regard to any other name recorded with the Division of Corporations.

The certification you requested is enclosed.

A limited liability annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file date. A Federal Employer Identification (FEI) number may be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling 1-800-829-3676 and requesting form SS-4.

Please be aware if the limited liability company address changes, it is the responsibility of the limited liability to notify this office.

Should you have any questions regarding this matter, please contact this office at the address given below.

Joey Bryan
Document Specialist
Tax Liens
Division of Corporations

Letter Number: 404A00053253

Account number: FCA000000015

Amount charged: 155.00

ARTICLES OF ORGANIZATION

Article I. Name

The name of this Florida Limited Liability Company is:

Foster & Dunhill Planning Services LLC

Article II. Address

The Company's street and mailing address is:

36408 Trilby Road
Dade City, FL 33523

Article III. Registered Agent

The name and Street Address of the Company's registered agent is:

Stephen R. Donaldson
36408 Trilby Road
Dade City, FL 33523

Article IV. Transferability of Membership Interests

No members shall have the right to assign their membership interests in the Company without the written agreement of all of the membership interests, unless otherwise provided in the Company's Operating Agreement. If the assignment is not approved by all of the membership interests, the assignee shall have no right to become a member, to participate in the management of the Company, or to exercise any other rights or powers of a member. The assignee shall merely be entitled to receive the share of profits and other distributions and the allocation of income, gain, loss deduction, credit or similar item to which the assignor was entitled, to the extent assigned.

Registered Agents Ltd.
1220 North Market Street, Suite 606
Wilmington, DE 19801
800-441-5940

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JULIAN J. CORCORAN
TALLAHASSEE, FLORIDA

Article V. Management

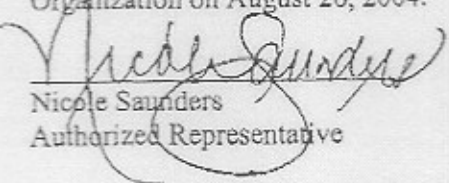
This will be a member-managed company. The name of the initial members are:

Stephen R. Donaldson
Stephen D. Donaldson
Christopher D. Donaldson

Article VI. Company Existence

The Company's existence shall begin effective as of the date of filing.

The undersigned authorized representative of a member executed these Articles of Organization on August 26, 2004.


Nicole Saunders
Authorized Representative

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CLERK OF SUPERIOR COURT
TALLAHASSEE, FLORIDA

850-205-0381

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Florida Dept of State



September 1, 2006

FLORIDA DEPARTMENT OF STATE

Division of Corporations

FOSTER & DUNHILL CONSULTING INC.
36414 TRILBY RD
DADE CITY, FL 33523

The Articles of Incorporation for FOSTER & DUNHILL CONSULTING INC. were filed on August 30, 2006, and assigned document number P06000113624. Please refer to this number whenever corresponding with this office.

This document was electronically received and filed under FAX audit number H06000217174.

A corporation annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file/effective date. A Federal Employer Identification (FEI) number will be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling 1-800-829-3676 and requesting form SS-4 or by going to their website at www.irs.ustreas.gov.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have any questions regarding corporations, please contact this office at the address given below.

Sincerely,
Tammy Hampton
Document Specialist
New Filings Section
Division of Corporations

Letter Number: 706A00053496

ARTICLES OF INCORPORATION

In compliance with Chapter 607 and/or Chapter 621, F.S. (Profit)

ARTICLE I NAME

The name of the corporation shall be:

Foster & Dunhill Consulting Inc.

36414 Trilby Road
Dade City, FL 33523

ARTICLE III PURPOSE

The purpose for which the corporation is organized is:

International Planning

ARTICLE IV SHARES

The number of shares of stock is:

100 \$ 1.00 par value

ARTICLE V INITIAL OFFICERS AND/OR DIRECTORS

List name(s), address(es) and specific title(s):

Stephen P. Donaldson
36414 Trilby Road
Dade City, FL 33523

ARTICLE VI REGISTERED AGENT

The name and Florida street address (P.O. Box NOT acceptable) of the registered agent is:


Stephen P. Donaldson
36414 Trilby Road
Dade City, FL 33523

ARTICLE VII INCORPORATOR

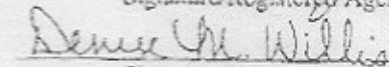
The name and address of the Incorporator is:

Denise M. Willis c/o Registered Agents, Ltd.
1220 North Market Street
Suite 804
Wilmington, DE 19801

Having been named as registered agent to accept service of process for the above stated corporation at the place designated in this certificate, I am familiar with and accept the appointment as registered agent and agree to act in this capacity

X 

Signature/Registered Agent



Signature/Incorporator

8/30/06

Date
8/10/06

Date